IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.3578 OF 2006.

Managing Director
Shri Datta Sahaari Sakhar
Karkhana ..Petitioner.

Vs.

Shri Shankar Annappa Gadhave
& Ors. ..Respondents.

Mr. V. B. Rajure & K.S. Bapat, Advocates for the Petitioner.

Mr.M.S. Torkar, Advocate for the Respondent No.1.

CORAM:R.M.S.KHANDEPARKAR,J.

DATED:5TH DECEMBER, 2006.

P.C.:-

1. Heard.

2. The petitioner challenges the order passed by the Labour Court and Industrial Court interfering in the punishment of dismissal imposed by the petitioner-management on account of proved misconduct. It is well settled law that normally court should not interfere with the exercise of discretion by the management in the matter of quantum of punishment in case of proved misconduct by the

employee.

3. However, once it is revealed that punishment imposed is shockingly disproportionate to the proved misconduct the Courts are entitled to interfere with the decision regarding quantum of punishment. In the case in hand, undisputedly misconduct proved is in relation to the some sort of uncivilized act with the fellow employees by the respondent no.1. Charge of abusive conduct nor the charge regarding disposal or theft of the empty barrels, was established. Under these circumstances, the Labour Court had set aside the order of dismissal directing reinstatement in services in continuity and payment of 70% backwages. The said order has been maintained by the Industrial Court. Only liberty granted by the Labour Court to the management to impose any punishment other than the dismissal in terms of Clause 23 (1) of the Standing Orders has been set aside by the Revisional Court. Undisputedly, punishment which may be imposed in respect of the proved misconduct by the employer is as under:-

24. Punishment for misconduct:-

(a). warned or censured, or

(b). subject to and in accordance with the provisions of the Payment of Wages Act, 1936, fined or,

(c) by an order in Writing signed by the Manager, suspended for a period not exceeding four days, or dismissed without notice.

4. Considering the nature of the proved misconduct, both the Courts below have arrived at concurrent findings that the punishment of dismissal is shockingly disproportionate to the proved misconduct. Indeed, no fault can be found with the said finding as rightly submitted on behalf of the respondent no.1. In the circumstances, punishment imposed is about deduction of 30% of the backwages. Though no such punishment is contemplated under Clause 24 of the Standing Orders, the punishment can be in the nature of fine which is contemplated under Clause (d) which could hardly be to the extent of Rs.1,000/- also. Being so, the punishment imposed being in the nature of 30% deduction in the backwages which will be more than the amount of Rs.1,000/-, there could be hardly any occasion for

the management to make the grievance of such punishment.

5. As regards the findings which are arrived on the basis of evidence on record, they are clearly borne out from the record and do not disclose any sort of perversity. It was strenuously argued on behalf of the petitioner that once the misconduct is proved, it is the discretion of the management in the matter of imposing punishment. However, it is well settled law that Courts are empowered to interfere when such discretion is exercised arbitrarily. In the matter in hand, considering the nature of the proved misconduct, it cannot be said that the findings arrived at by the Courts below that the punishment of dismissal is certainly shockingly disproportionate to the proved misconduct is perverse.

6. Attention was sought to be drawn to the testimonies of witnesses to contend that the findings arrived by the Courts below regarding the failure on the part of the management to prove the charge regarding the theft, are contrary to the materials on record. Even after perusal of the

testimonies of the witnesses who were examined on behalf of the management, the same nowhere establishes the act of theft or disposal of any empty barrel by the respondent no.1 without the knowledge of the petitioner. Merely because one of the witness had stated in the year 2006, that in August, 1984 the respondent no.1 had supplied him one empty barrel, the said statement cannot be believed as the deponent had nowhere disclosed as to for what purpose said barrel was purchased by him from the respondent no.1 and why he did not disclose the said fact in the course of inquiry against the respondent no.1. There is no explanation on behalf of the management as to why the said person was not examined at the relevant time.

7. It is also sought to be contended on behalf of the petitioner that the respondent had not led any evidence about the fact that he was not gainfully employed during the period of 18 years after dismissing from the service. The testimony of the respondent no.1 in that regard clearly discloses that he had made every effort to get another job during the said period but without any success. It was specifically suggested on behalf

of the petitioner that the respondent no.1 was employed in Warna Sahakari Sakhar Wahatuk Sangh. However, admittedly, the petitioner had not examined any employee of the said Wahatuk Sangh to establish that the respondent no.1 was in fact employed in the said firm, at any point of time. Being so, as far as the respondent no.1 is concerned, there was sufficient evidence led about the fact that he was not gainfully employed during the relevant period and the petitioner had failed to disprove the said claim.

8. For the reasons stated above, therefore, there is no case made out for interference in the impugned order and it does not disclose any jurisdictional error so as to warrant the interference in writ jurisdiction under Article 227 of the Constitution. The petition, therefore, fails and is hereby rejected.

[R.M.S.KHANDEPARKAR,J]